

EXHIBIT D

Mechanical Steno - Computer-Aided Transcript

1 against us, he will not testify.

2 With respect to the Haden deposition, we have
3 cancelled it, your Honor. We're not going to pursue Mr. Haden
4 or Mr. Garfio. We understand the Court's ruling has been made.
5 We're not looking to reargue it. We feel that makes it
6 impossible for us to present either of those witnesses if we
7 can't use documents and we also think it's a burden on our
8 Fifth Amendment rights as well. Bottom line is we're not
9 putting on Haden's deposition and we're not calling Garfio.

04:27 10 THE COURT: So let me understand. Are we still on
11 schedule to, by Zoom, take statements out of the hearing of the
12 jury of Mr. Orr and Mr. Lopes and Mr. Garfio, that they are
13 going to --

14 MR. KENDALL: I think Mr. Kelly may have been more on
15 top of that issue. If you want me to finish.

16 THE COURT: Yes. Go ahead.

17 MR. KENDALL: On Monday, we will have three other
18 witnesses. We've given the names to Mr. Frank already. That
19 is Jack Bowen, the high school water polo coach of Johnny
04:28 20 Wilson, and two other of his teammates will also be coming.

21 THE COURT: So Jack Bowen and then Johnny Wilson?

22 MR. KENDALL: No. Jack Bowen and then the other are
23 Quinn Barron and James Walters.

24 THE COURT: What are they testifying about?

25 MR. KENDALL: They're just teammates from the team.

1 We had had a coach of the team and another teammate listed.
2 They've dropped off. Instead, there will be these two other
3 teammates. They're giving the same testimony as the two
4 people we dropped off.

5 MR. FRANK: We object to those two witnesses. They
6 were not disclosed to us before today. They were not on the
7 defendants' witness list that was due pretrial. They were
8 sprung on us today.

9 MR. KENDALL: Your Honor, we spoke with them yesterday
04:29 10 and they agreed to testify yesterday. We had two other people
11 from the team on the list. We've taken those two off. One of
12 them is objecting through counsel. The other one we're not
13 going to present. We've got these two yesterday. We told him
14 this morning as soon as we had it confirmed. It's not as if we
15 delayed or playing games. It's the same type of witnesses
16 they've already given notice of the two withdrawn. We're
17 substituting two and they're fungible. There's no change or
18 surprise.

19 MR. FRANK: I don't know if it's fungible or not. I
04:29 20 know there was a witness list due well pretrial in a case
21 that's been pending for several years and days before the
22 witnesses are being called we're being given names of
23 individuals who have never been identified to us as witnesses.
24 There's things that we do to research people that we do.
25 That's one of the reasons that witness lists are due pretrial.

1 We now don't have time to do things. This is complete
2 sandbagging, your Honor.

3 MR. KENDALL: It's not sandbagging. Mr. Moon gave
4 testimony that went far beyond his field too. I'll tell you
5 exactly what happened.

6 THE COURT: I don't want an argument here. Are those
7 witnesses available for a deposition by Zoom on Saturday?

8 MR. KENDALL: I think they're flying out that day. If
9 the issue is --

04:30 10 THE COURT: You're planning to call them on Monday?

11 MR. KENDALL: Put them on Monday morning, yes. We're
12 planning to put on Bowen and the two other water polo players
13 Monday morning.

14 THE COURT: Bowen has been known, correct?

15 MR. KENDALL: Yes.

16 THE COURT: I'm not concerned about Bowen. How long
17 are you expecting the direct of those two players to be?

18 MR. KENDALL: 20, 30 minutes at most.

19 THE COURT: You will make them available by Zoom or
04:31 20 otherwise to the government at the government's convenience,
21 which of course won't be convenient between now and Monday
22 morning, but at their less inconvenient for a deposition of
23 each of them to extend no more than 1 hour. The defendants
24 will be responsible for paying for daily copies so they have
25 copies of those depositions at the time they are put on the

1 stand.

2 MR. KENDALL: That's fine, your Honor. In terms of
3 scheduling of it, these are people that we don't have control
4 over witnesses the way the government does. We will get them
5 to be available.

6 THE COURT: If you want them to testify, you'll make
7 them available to the government before they go on the stand.

8 MR. KENDALL: Understood, your Honor. I'm just saying
9 when may be a function of airplane flights and work
04:32 10 commitments, but we understand.

11 MR. KELLY: Your Honor, one more point. I want to
12 make clear what I was referring to about the admission. I was
13 talking about Exhibit 1563A, the briefing. We believe there is
14 binding First Circuit precedent.

15 THE COURT: On what part of your argument does this
16 relate? I'm sorry.

17 MR. KELLY: Yes. There's multiple motions pending.
18 One of them pertains to a government pleading where they state
19 something to the effect that they're not alleging that Donna
04:32 20 Heinel was personally pocketing money. I don't have the exact
21 quote in front of me. The exhibit that's discussed is 1563A,
22 and it's our position, your Honor, there's binding First
23 Circuit precedent on this vote that an admission is an
24 admission, and the cite is 840 F 2nd 118. It's the Kattar,
25 K-a-t-t-a-r, case.